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WEST VALLEY STAFFING GROUP

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

DEMETRIC DI-AZ, OWEN DIAZ and  
LAMAR PATTERSON

Plaintiffs

v.

TESLA, INC. DBA TESLA MOTORS,  
INC.; CITISTAFF SOLUTIONS, INC.;  
WEST VALLEY STAFFING GROUP;  
CHARTWELL STAFFING SERVICES,  
INC.,

Defendants

Case No. 17-cv-06748-SK

**DEFENDANT WEST VALLEY  
STAFFING GROUP'S ANSWER TO  
PLAINTIFFS' COMPLAINT FOR  
DAMAGES**

Assigned to: Magistrate Judge Sallie Kim  
Action Filed:  
Trial Date: TBA

Defendant WEST VALLEY STAFFING GROUP ("WEST VALLEY") hereby responds to the Complaint for Damages ("Complaint") of Plaintiffs DEMETRIC DI-AZ ("DI-AZ"), OWEN DIAZ ("DIAZ") and LAMAR PATTERSON ("PATTERSON")<sup>1</sup> as follows:

1. WEST VALLEY lacks sufficient information and belief with respect to the allegations contained in Paragraphs 1, 8, 9, 14, 17, 18, 19, 20, 22, 23, 24, 25, 26, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 71, 72, 73, 74, 79, 84, 146, 152, 153, 154, 155, and 156 of the Complaint,

<sup>1</sup> DI-AZ, DIAZ and PATTERSON are collectively referred to herein as "PLAINTIFFS."

1 and on that basis, denies each and every, generally and specifically, all and singularly, the  
 2 allegations contained in Paragraphs 1, 8, 9, 14, 17, 18, 19, 20, 22, 23, 24, 25, 26, 31, 32, 33, 34,  
 3 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60,  
 4 61, 62, 63, 64, 65, 66, 71, 72, 73, 74, 79, 84, 146, 152, 153, 154, 155, and 156 of the Complaint.

5 2. Paragraphs 3, 4, 6, 11, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106,  
 6 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 124, 125, 126, 127,  
 7 128, 129, 130, 131, 132, 133, 134, 135, 136, 162, 163, 164, 165, 166, 167, 168, 169, 170, 172,  
 8 173, 174, 175, 176, 177, 178, 180, 181, 182, 183, 184, 185, 187, 188, 189, 190, 191, 192, 222,  
 9 223, 224, 225, 226, 227, 228, 229, 230 and 231 of the Complaint are not charging as to WEST  
 10 VALLEY, but, to the extent necessary, WEST VALLEY denies each and every, generally and  
 11 specifically, all and singularly, the allegations contained in Paragraphs 3, 4, 6, 11, 92, 93, 94, 95,  
 12 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117,  
 13 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 162,  
 14 163, 164, 165, 166, 167, 168, 169, 170, 172, 173, 174, 175, 176, 177, 178, 180, 181, 182, 183,  
 15 184, 185, 187, 188, 189, 190, 191, 192, 222, 223, 224, 225, 226, 227, 228, 229, 230 and 231 of the  
 16 Complaint.

17 3. WEST VALLEY denies the allegations contained in Paragraph 2 of the Complaint  
 18 to the extent they imply or allege that WEST VALLEY subjected PLAINTIFFS to “racially  
 19 motivated abuse, including the frequent use of racial slurs.” WEST VALLEY further denies the  
 20 allegations contained in Paragraph 2 of the Complaint to the extent they imply or allege that  
 21 PLAINTIFFS ever “complained” to WEST VALLEY regarding any alleged “racially motivated  
 22 abuse, including the frequent use of racial slurs.” WEST VALLEY lacks sufficient information  
 23 and belief with respect to the remaining allegations contained in Paragraph 2 of the Complaint,  
 24 and on that basis, denies each and every, generally and specifically, all and singularly, the  
 25 remaining allegations contained in Paragraph 2 of the Complaint.

26 4. WEST VALLEY admits the allegations contained in Paragraph 5 of the Complaint  
 27 that WEST VALLEY “is a staffing corporation with corporate offices in Sunnyvale, California,”  
 28 that WEST VALLEY “provides trained employees for short and long-term assignments to other

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1 businesses,” that WEST VALLEY’s “employees are sent to work at other business’ sites” and that  
 2 WEST VALLEY’s employees “receive paychecks from WEST VALLEY.” As to the allegations  
 3 contained in Paragraph 2 of the Complaint, which contain legal contentions and conclusions,  
 4 DEFENDANT is not required to respond. WEST VALLEY denies each and every, generally and  
 5 specifically, all and singularly, the remaining material allegations contained within Paragraph 2 of  
 6 the Complaint.

7 5. WEST VALLEY admits the allegations of Paragraph 7 of the Complaint that DI-  
 8 AZ became an employee of WEST VALLEY in August 2015 and that, at that time, DI-AZ was  
 9 placed on assignment with TESLA as a Production Associate. WEST VALLEY denies the  
 10 allegations contained in Paragraph 7 of the Complaint to the extent they imply or allege that  
 11 WEST VALLEY ever terminated DI-AZ’s employment. WEST VALLEY lacks sufficient  
 12 information and belief as to the remaining allegations contained in Paragraph 7 of the Complaint  
 13 and on that basis, denies each and every, generally and specifically, all and singularly, the  
 14 remaining allegations contained in Paragraph 7 of the Complaint.

15 6. As to the allegations contained in Paragraph 10 of the Complaint, which contain  
 16 legal contentions and conclusions, DEFENDANT is not required to respond. WEST VALLEY  
 17 lacks sufficient information and belief as to the remaining allegations contained in Paragraph 10 of  
 18 the Complaint and on that basis, denies each and every, generally and specifically, all and  
 19 singularly, the remaining material allegations contained within Paragraph 10 of the Complaint.

20 7. Answering Paragraph 12 of the Complaint, WEST VALLEY admits that  
 21 jurisdiction and venue are proper in this Court. The statutory provisions speak for themselves and  
 22 no answer is required as to PLAINTIFFS’ allegations concerning said statutory provisions.

23 8. Answering Paragraph 13 of the Complaint, WEST VALLEY admits that venue is  
 24 proper in the Oakland Division of the Northern District of California. To the extent Paragraph 13  
 25 of the Complaint contains legal contentions and conclusions, WEST VALLEY is not required to  
 26 respond.

27 9. WEST VALLEY admits the allegations contained in Paragraph 15 of the  
 28 Complaint to the extent they allege that DI-AZ was hired by WEST VALLEY and that his start

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1 date was August 24, 2015. WEST VALLEY denies the allegations contained in Paragraph 15 of  
 2 the Complaint to the extent they allege that DI-AZ's employment with WEST VALLEY was  
 3 anything other than "at will." WEST VALLEY lacks sufficient information and belief with  
 4 respect to the remaining allegations contained in Paragraph 15 of the Complaint, and on that basis,  
 5 denies each and every, generally and specifically, all and singularly, the remaining allegations  
 6 contained in Paragraph 15 of the Complaint.

7 10. WEST VALLEY admits the allegations contained in Paragraph 16 of the  
 8 Complaint that DI-AZ's assignment with TESLA as a Production Associate commenced in  
 9 August 2015. WEST VALLEY lacks sufficient information and belief with respect to the  
 10 remaining allegations contained in Paragraph 16 of the Complaint and on that basis, denies each  
 11 and every, generally and specifically, all and singularly, the remaining allegations of Paragraph 16  
 12 of the Complaint.

13 11. Answering the allegations of Paragraph 21 of the Complaint, WEST VALLEY  
 14 denies each and every, generally and specifically, all and singularly, the allegations contained in  
 15 Paragraph 21 of the Complaint.

16 12. Answering Paragraphs 27, 28, 30, 67, 68, 70, 75, 76, 78, 86, 87, 88, 89, 90, 138,  
 17 141, 142, 143, 144, 149, 158, 159, 160, 197, 198, 199, 203, 204, 205, 209, 210, 211, 212, 218, 219  
 18 and 220 of the Complaint, said paragraphs contain legal contentions or conclusions and no answer  
 19 is required as to said legal contentions or conclusions. WEST VALLEY denies each and every,  
 20 generally and specifically, all and singularly, the remaining material allegations contained in  
 21 Paragraphs 27, 28, 30, 67, 68, 70, 75, 76, 78, 86, 87, 88, 89, 90, 138, 141, 142, 143, 144, 149, 158,  
 22 159, 160, 197, 198, 199, 203, 204, 205, 209, 210, 211, 212, 218, 219 and 220 of the Complaint.

23 13. Answering Paragraphs 29, 69, 77 and 157 of the Complaint, the cited statutory  
 24 provisions speak for themselves and no answer is required as to PLAINTIFFS' allegations  
 25 concerning said statutory provisions. As to those portions of Paragraphs 29, 69, 77 and 157 of the  
 26 Complaint which contain legal contentions or conclusions, no answer is required as to said legal  
 27 contentions or conclusions. WEST VALLEY denies each and every, generally and specifically,  
 28 all and singularly, the remaining material allegations contained in Paragraphs 29, 69, 77 and 157

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1 of the Complaint.

2 14. Answering Paragraph 80, WEST VALLEY re-alleges and incorporates by  
3 reference its responses to Paragraphs 1 through 79, hereinbefore, as though fully set forth herein.

4 15. WEST VALLEY denies the allegations contained in Paragraph 81 of the Complaint  
5 that DI-AZ was ever in a “contractual relationship with” WEST VALLEY. As to those portions  
6 of Paragraph 81 of the Complaint which contain references to statutory provisions, the cited  
7 statutory provisions speak for themselves and no answer is required. As to those portions of  
8 Paragraph 81 of the Complaint which contain legal contentions or conclusions, no answer is  
9 required as to said legal contentions or conclusions. WEST VALLEY lacks sufficient information  
10 and belief as to the remaining allegations of Paragraph 81 of the Complaint, and on that basis,  
11 denies each and every, generally and specifically, all and singularly, the remaining allegations  
12 contained in Paragraph 81 of the Complaint.

13 16. WEST VALLEY denies the allegations contained in Paragraph 82 of the Complaint  
14 to the extent they imply or allege that WEST VALLEY ever entered into an “employment  
15 contract” with any of the PLAINTIFFS. WEST VALLEY further denies the allegations contained  
16 in Paragraph 82 that WEST VALLEY “violated” the rights of any of the PLAINTIFFS relative to  
17 any alleged (non-existent) “employment contract.” As to those portions of Paragraph 82 of the  
18 Complaint which contain legal contentions or conclusions, no answer is required as to said legal  
19 contentions or conclusions. WEST VALLEY lacks sufficient information and belief as to the  
20 remaining allegations contained in Paragraph 82 of the Complaint, and on that basis, denies each  
21 and every, generally and specifically, all and singularly, the remaining allegations contained in  
22 Paragraph 82 of the Complaint.

23 17. WEST VALLEY denies the allegations contained in Paragraph 83 of the Complaint  
24 to the extent they imply or allege that any of the PLAINTIFFS ever made any “reports and  
25 complaints” of “racial harassment” or of a “hostile work environment” to WEST VALLEY.  
26 WEST VALLEY further denies the allegations of Paragraph 83 of the Complaint to the extent  
27 they imply or allege that WEST VALLEY ever issued DI-AZ “a written warning based on false  
28 allegations” or that WEST VALLEY ever “approve[d]” of any alleged “retaliatory termination” of

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1 DI-AZ. WEST VALLEY lacks sufficient information and belief with respect to the remaining  
 2 allegations of Paragraph 83 of the Complaint, and on that basis, denies each and every, generally  
 3 and specifically, all and singularly, the remaining allegations of Paragraph 83 of the Complaint.

4 18. WEST VALLEY denies the allegations of Paragraph 85 of the Complaint that  
 5 WEST VALLEY “failed to prevent” any alleged “racially harassing and retaliatory behavior  
 6 directed at” any of the PLAINTIFFS, as well as “others.” WEST VALLEY further denies the  
 7 allegations of Paragraph 85 of the Complaint to the extent they imply or allege that DI-AZ was  
 8 ever “terminated” by WEST VALLEY. WEST VALLEY lacks sufficient information and belief  
 9 with respect to the remaining allegations of Paragraph 85 of the Complaint and on that basis,  
 10 denies each and every, generally and specifically, all and singularly, the remaining allegations of  
 11 Paragraph 85 of the Complaint.

12 19. Answering Paragraph 91, WEST VALLEY re-alleges and incorporates by  
 13 reference its responses to Paragraphs 1 through 90, hereinbefore, as though fully set forth herein.

14 20. Answering Paragraph 99, WEST VALLEY re-alleges and incorporates by  
 15 reference its responses to Paragraphs 1 through 98, hereinbefore, as though fully set forth herein.

16 21. Answering Paragraph 107, WEST VALLEY re-alleges and incorporates by  
 17 reference its responses to Paragraphs 1 through 106, hereinbefore, as though fully set forth herein.

18 22. Answering Paragraph 122, WEST VALLEY re-alleges and incorporates by  
 19 reference its responses to Paragraphs 1 through 121, hereinbefore, as though fully set forth herein.

20 23. Answering Paragraph 137, WEST VALLEY re-alleges and incorporates by  
 21 reference its responses to Paragraphs 1 through 136, hereinbefore, as though fully set forth herein.

22 24. Answering the allegations of Paragraph 139, 140, 151, 207 and 208 of the  
 23 Complaint, said allegations are vague, ambiguous and unintelligible. On that basis, WEST  
 24 VALLEY denies each and every, generally and specifically, all and singularly, the allegations of  
 25 Paragraphs 139, 140, 151, 207 and 208 of the Complaint.

26 25. Answering Paragraph 145, WEST VALLEY re-alleges and incorporates by  
 27 reference its responses to Paragraphs 1 through 144, hereinbefore, as though fully set forth herein.

28 26. WEST VALLEY admits the allegations of Paragraph 147 that DI-AZ was

1 employed by WEST VALLEY effective August 24, 2015. WEST VALLEY lacks sufficient  
 2 information and belief with respect to the remaining allegations of Paragraph 147 of the  
 3 Complaint and on that basis, denies each and every, generally and specifically, all and singularly,  
 4 the remaining allegations of Paragraph 147 of the Complaint.

5 27. WEST VALLEY denies the allegations of Paragraph 148 of the Complaint to the  
 6 extent they imply or allege that DI-AZ ever “reported” any alleged “racially harassing and  
 7 discriminatory behavior” to WEST VALLEY, including any alleged “threat to terminate his  
 8 employment for his refusal to endure the daily racial harassment. As to those portions of  
 9 Paragraph 148 of the Complaint that contain legal contentions or conclusions, no answer is  
 10 required as to said legal contentions or conclusions. WEST VALLEY lacks sufficient information  
 11 and belief with respect to the remaining allegations of Paragraph 148 of the Complaint and on that  
 12 basis, denies each and every, generally and specifically, all and singularly, the remaining  
 13 allegations of Paragraph 148 of the Complaint.

14 28. Answering the allegations of Paragraph 150 of the Complaint, WEST VALLEY  
 15 denies each and every, generally and specifically, all and singularly, the allegations of Paragraph  
 16 150 of the Complaint.

17 29. Answering Paragraph 161, WEST VALLEY re-alleges and incorporates by  
 18 reference its responses to Paragraphs 1 through 160, hereinbefore, as though fully set forth herein.

19 30. Answering Paragraph 171, WEST VALLEY re-alleges and incorporates by  
 20 reference its responses to Paragraphs 1 through 170, hereinbefore, as though fully set forth herein.

21 31. Answering Paragraph 179, WEST VALLEY re-alleges and incorporates by  
 22 reference its responses to Paragraphs 1 through 178, hereinbefore, as though fully set forth herein.

23 32. Answering Paragraph 186, WEST VALLEY re-alleges and incorporates by  
 24 reference its responses to Paragraphs 1 through 185, hereinbefore, as though fully set forth herein.

25 33. Answering Paragraph 193, WEST VALLEY re-alleges and incorporates by  
 26 reference its responses to Paragraphs 1 through 192, hereinbefore, as though fully set forth herein.

27 34. Answering the allegations of Paragraph 194 of the Complaint, WEST VALLEY  
 28 denies each and every, generally and specifically, all and singularly, the allegations of Paragraph

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194 of the Complaint.

35. Answering the allegations of Paragraph 195 of the Complaint, WEST VALLEY denies each and every, generally and specifically, all and singularly, the allegations of Paragraph 195 of the Complaint.

36. Answering the allegations of Paragraph 196 of the Complaint, WEST VALLEY denies each and every, generally and specifically, all and singularly, the allegations of Paragraph 196 of the Complaint.

37. Answering Paragraph 200, WEST VALLEY re-alleges and incorporates by reference its responses to Paragraphs 1 through 199, hereinbefore, as though fully set forth herein.

38. WEST VALLEY denies the allegations of Paragraph 201 of the Complaint that "PLAINTIFFS complained repeatedly to" WEST VALLEY about any "constant racial abuse" that they allegedly "received on a daily basis" or that PLAINTIFFS ever "made clear" to WEST VALLEY that Plaintiffs had suffered "racial harassment" which caused "distress, humiliation, and suffering." WEST VALLEY lacks sufficient information and belief with respect to the remaining allegations of Paragraph 201 of the Complaint, and on that basis, denies each and every, generally and specifically, all and singularly, the remaining allegations of Paragraph 201 of the Complaint.

39. Answering the allegations of Paragraph 202 of the Complaint, WEST VALLEY denies each and every, generally and specifically, all and singularly, the allegations of Paragraph 202 of the Complaint.

40. Answering Paragraph 206, WEST VALLEY re-alleges and incorporates by reference its responses to Paragraphs 1 through 205, hereinbefore, as though fully set forth herein.

41. DEFENDANT denies the allegations of Paragraph 207 of the Complaint that DEFENDANT "knew or reasonably should have known through reasonable investigation of some of its agents and/or employees' propensity for unlawful racially harassing and physical aggressive behavior." DEFENDANT lacks sufficient information and belief with respect to the remaining allegations of Paragraph 207 of the Complaint, and on that basis, denies each and every, generally and specifically, all and singularly, the remaining allegations of Paragraph 207 of the Complaint.

42. DEFENDANT denies the allegations of Paragraph 208 of the Complaint that



1 DEFENDANT “had a duty not to hire or retain” certain unnamed “employees/agents” on the  
 2 purported basis that said unnamed “employees/agents” possessed “wrongful, dangerous, and  
 3 racially offensive propensities.” DEFENDANT further denies the allegations of Paragraph 208 of  
 4 the Complaint to the extent they imply or allege that DEFENDANT failed “to provide reasonable  
 5 supervision” of certain unnamed “employees/agents” and further that said certain unnamed  
 6 “employees/agents” of DEFENDANT engaged in conduct which was or could be considered  
 7 wrongful, dangerous or racially offensive. DEFENDANT lacks sufficient information and belief  
 8 with respect to the remaining allegations of Paragraph 208 of the Complaint, and on that basis,  
 9 denies each and every, generally and specifically, all and singularly, the remaining allegations of  
 10 paragraph 208 of the Complaint.

11 43. DEFENDANT denies the allegations of Paragraph 209 of the Complaint that  
 12 DEFENDANT “negligently hired, retained and/or failed to adequately supervise” certain unnamed  
 13 “employees/agents,” that certain unnamed “employees/agents” of DEFENDANT “committed the  
 14 wrongful acts” alleged in the Complaint and that DEFENDANT “failed to provide reasonable  
 15 supervision” of these certain unnamed “employees/agents.” DEFENDANT further denies the  
 16 allegations of Paragraph 209 of the Complaint to the extent they imply or allege that  
 17 DEFENDANT knew or was aware of any “propensities” of certain unnamed “employees/agents”  
 18 to commit any “wrongful acts” or that DEFENDANT knew or was aware that certain unnamed  
 19 “employees/agents” had had “complaints made against them” for any “wrongful acts.”  
 20 DEFENDANT lacks sufficient information and belief with respect to the remaining allegations of  
 21 Paragraph 209 of the Complaint, and on that basis, denies each and every, generally and  
 22 specifically, all and singularly, the remaining allegations of Paragraph 209 of the Complaint.

23 44. Answering Paragraph 213, WEST VALLEY re-alleges and incorporates by  
 24 reference its responses to Paragraphs 1 through 212, hereinbefore, as though fully set forth herein.

25 45. WEST VALLEY denies the allegations of Paragraph 214 of the Complaint that  
 26 WEST VALLEY “punished” DI-AZ “by terminating” DI-AZ’s “employment.” WEST VALLEY  
 27 further denies the allegations of Paragraph 214 of the Complaint that WEST VALLEY ever  
 28 “terminat[ed]” DI-AZ. WEST VALLEY lacks sufficient information and belief with respect to

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1 the remaining allegations of Paragraph 214 of the Complaint, and on that basis, denies each and  
 2 every, generally and specifically, all and singularly, the remaining allegations of Paragraph 214 of  
 3 the Complaint.

4 46. WEST VALLEY denies the allegations of Paragraph 215 of the Complaint that  
 5 WEST VALLEY ever “stated that [DI-AZ] should be terminated for performance issues.” WEST  
 6 VALLEY further denies the allegations of Paragraph 215 of the Complaint to the extent they  
 7 imply or allege that WEST VALLEY terminated DI-AZ’s employment and that the purported  
 8 basis for any alleged (non-existent) termination of DI-AZ’s employment “was merely a pretext.”  
 9 WEST VALLEY lacks sufficient information and belief with respect to the remaining allegations  
 10 of Paragraph 215 of the Complaint, and on that basis, denies each and every, generally and  
 11 specifically, all and singularly, the remaining allegations of Paragraph 215 of the Complaint.

12 47. Answering the allegations of Paragraph 216 of the Complaint, WEST VALLEY  
 13 denies each and every, generally and specifically, all and singularly, the allegations of Paragraph  
 14 216 of the Complaint.

15 48. WEST VALLEY denies the allegations of Paragraph 217 of the Complaint to the  
 16 extent they imply or allege that WEST VALLEY ever made a “decision to terminate” DI-AZ’s  
 17 “employment.” As WEST VALLEY never made a “decision to terminate” DI-AZ’s  
 18 “employment,” WEST VALLEY further denies the allegations of Paragraph 217 of the Complaint  
 19 that any such nonexistent “decision to terminate” was “based on discriminatory motives,” that any  
 20 such nonexistent “decision to terminate” “was contrary to the policies, rules, regulations, and laws  
 21 of the State of California” and that any such nonexistent “decision to terminate” “constituted an  
 22 unlawful termination under California law.” As to the cited statutory provisions, said cited  
 23 statutory provisions speak for themselves and no answer is required as to PLAINTIFFS’  
 24 allegations concerning said statutory provisions. To the extent Paragraph 217 of the Complaint  
 25 contains legal contentions and conclusions, WEST VALLEY is not required to respond to said  
 26 legal contentions and conclusions. WEST VALLEY lacks sufficient information and belief as to  
 27 the remaining allegations of Paragraph 217 of the Complaint, and on that basis, denies each and  
 28 every, generally and specifically, all and singularly, the remaining allegations of Paragraph 217 of

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1 the Complaint.

2 49. Answering Paragraph 221, WEST VALLEY re-alleges and incorporates by  
3 reference its responses to Paragraphs 1 through 220, hereinbefore, as though fully set forth herein.

4 50. With regard to PLAINTIFFS' Request for Relief, DEFENDANT denies that such  
5 relief is either appropriate or justified in the circumstances of this case.

6 51. Answering all other Paragraphs of the Complaint, DEFENDANT denies each and  
7 every, generally and specifically, all and singularly, the allegations of these paragraphs, and the  
8 whole thereof.

9 **AFFIRMATIVE DEFENSES TO ALL CAUSES OF ACTION**

10 AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
11 WEST VALLEY alleges that PLAINTIFFS' Complaint, and each cause of action therein, fails to  
12 state facts sufficient to constitute any cause of action.

13 AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
14 WEST VALLEY alleges that PLAINTIFFS' Complaint is barred by the applicable statute of  
15 limitation, including but not limited to, those enumerated in California Code of Civil Procedure  
16 Sections 335.1, 338, 340, 343 and 361, California Government Code Section 12965 and 28 U.S.C.  
17 Section 1658.

18 AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
19 WEST VALLEY alleges that the relief sought by PLAINTIFFS is barred due to the acts, conduct,  
20 and omissions of PLAINTIFFS which constitute waiver.

21 AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
22 WEST VALLEY alleges that the relief sought by PLAINTIFFS is barred due to the acts, conduct,  
23 and omissions of Plaintiff which constitute estoppel.

24 AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
25 WEST VALLEY alleges that the relief sought by PLAINTIFFS is barred due to the acts, conduct,  
26 and omissions of PLAINTIFFS which constitute laches.

27 AS AND FOR A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
28 WEST VALLEY alleges that the relief sought by PLAINTIFFS is barred due to the acts, conduct,

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and omissions of Plaintiff which constitute unclean hands.

AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Complaint, and each cause of action contained therein, is barred because PLAINTIFFS would be unjustly enriched by receipt of any recovery prayed for in the Complaint.

AS AND FOR AN EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, WEST VALLEY alleges that any of WEST VALLEY'S conduct towards PLAINTIFFS was justified and privileged.

AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, WEST VALLEY alleges that any loss or damage suffered by PLAINTIFFS was caused in whole or in part, by PLAINTIFFS' own conduct, acts or omissions.

AS AND FOR A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, WEST VALLEY alleges that PLAINTIFFS' claim for attorney's fees is barred as improper because there is no alleged basis either in contract or by statute for the recovery of attorney's fees against this Defendant.

AS AND FOR AN ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, WEST VALLEY alleges that PLAINTIFS' Complaint, and each cause of action therein, is uncertain, ambiguous, and unintelligible as it pertains to WEST VALLEY.

AS AND FOR A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Complaint, and each cause of action therein, is barred because WEST VALLEY is an improper party and/or wrongly joined in this action.

AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, WEST VALLEY alleges that PLAINTIFFS had no probable cause for bringing any action against this answering Defendant.

AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Complaint, and each cause of action thereof, are barred in whole or in part because PLAINTIFFS have sustained no injury or damage by reason of acts or omissions of WEST VALLEY.

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1 AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 2 DEFENSE, WEST VALLEY alleges that should PLAINTIFFS recover from WEST VALLEY,  
 3 WEST VALLEY is entitled to indemnification, either in whole or in part, from all persons or  
 4 entities whose negligence and/or fault proximately contributed to PLAINTIFFS' damages, if any  
 5 there were.

6 AS AND FOR A SIXTEETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
 7 WEST VALLEY alleges that there was no unity of interest between Defendants.

8 AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 9 DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Complaint is barred because  
 10 PLAINTIFFS failed to exhaust their administrative remedies.

11 AS AND FOR AN EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 12 DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Complaint is barred because WEST  
 13 VALLEY never terminated any PLAINTIFFS' employment.

14 AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 15 DEFENSE, WEST VALLEY, without admitting that it engaged in or made any of the acts,  
 16 conduct, or statements attributed to it in the Complaint, alleges that PLAINTIFFS' Complaint fails  
 17 to state facts sufficient to constitute any cause of action because, to the extent any of the  
 18 PLAINTIFFS' were employed by WEST VALLEY, PLAINTIFFS' employment was terminable  
 19 at will.

20 AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE  
 21 DEFENSE, WEST VALLEY, without admitting that it engaged in or made any of the acts,  
 22 conduct, or statements attributed to it in the Complaint, alleges that PLAINTIFFS have failed and  
 23 refused to exercise a reasonable effort to obtain other employment in an effort to mitigate their  
 24 damages.

25 AS AND FOR A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
 26 DEFENSE, WEST VALLEY, without admitting that it engaged in or made any of the acts,  
 27 conduct, or statements attributed to it in the Complaint, alleges that PLAINTIFFS breached their  
 28 duty to minimize their losses and mitigate their damages by failing to make reasonable efforts to

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1 find comparable work. As such, any amount that PLAINTIFFS could reasonably have earned by  
 2 obtaining comparable work through reasonable efforts must be offset from the damages, if any,  
 3 awarded to PLAINTIFFS.

4 AS AND FOR A TWENTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE  
 5 DEFENSE, WEST VALLEY, without admitting that it engaged in or made any of the acts,  
 6 conduct, or statements attributed to it in the Complaint, alleges that it has taken reasonable care to  
 7 prevent and promptly correct any discriminatory behavior through its policies and procedures.

8 AS AND FOR A TWENTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE  
 9 DEFENSE, WEST VALLEY alleges that PLAINTIFFS' claim for punitive damages against  
 10 WEST VALLEY is barred by the provisions of Civil Code Section 3294. WEST VALLEY is not  
 11 liable for the acts of any employees/agents because WEST VALLEY did not have advance  
 12 knowledge of any unfitness in any employee/agent and did not employ any employee/agent with a  
 13 conscious disregard of the rights and safety of others. Further, WEST VALLEY did not authorize  
 14 or ratify any alleged wrongful conduct. In addition, WEST VALLEY is not personally guilty of  
 15 oppression, fraud, or malice.

16 AS AND FOR A TWENTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 17 DEFENSE, WEST VALLEY, without admitting that it engaged in or made any of the acts,  
 18 conduct, or statements attributed to it in the Complaint, alleges that PLAINTIFFS were terminated  
 19 for legitimate, non-discriminatory, non-prohibited reasons or for good cause.

20 AS AND FOR A TWENTY-FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 21 DEFENSE, WEST VALLEY, without admitting that it engaged in or made any of the acts,  
 22 conduct, or statements attributed to it in the Complaint, alleges that PLAINTIFFS' damages, if  
 23 any, should be reduced, in whole or in part, by PLAINTIFFS' failure to avoid the consequences of  
 24 alleged harassment by using the preventive and corrective measures provided by the employer.

25 AS AND FOR A TWENTY-SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 26 DEFENSE, WEST VALLEY, without admitting that it engaged in or made any of the acts,  
 27 conduct or statements attributed to it in the Complaint, alleges that if any of its employees or  
 28 agents engaged in unlawful discrimination or harassing behavior toward PLAINTIFFS, WEST

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1 VALLEY is not liable for the discrimination and/or harassment.

2 AS AND FOR A TWENTY-SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
3 DEFENSE, WEST VALLEY, without admitting that it engaged in or made any of the acts,  
4 conduct or statements attributed to it in the Complaint, alleges that PLAINTIFFS may not obtain  
5 any of the relief requested in the Complaint because any adverse employment action, if at all, was  
6 taken against PLAINTIFF based on legitimate, non-discriminatory factors other than  
7 PLAINTIFFS' alleged race or any protected activity.

8 AS AND FOR A TWENTY-EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE  
9 DEFENSE, WEST VALLEY alleges that PLAINTIFFS' claim for punitive damages against  
10 WEST VALLEY is barred by WEST VALLEY'S adoption, publication and enforcement of a  
11 policy against the discrimination, harassment and retaliation of the type alleged in the Complaint.

12 AS AND FOR A TWENTY-NINTH, SEPARATE AND DISTINCT AFFIRMATIVE  
13 DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Complaint is barred because any  
14 damages suffered by Plaintiff were proximately caused by conduct, acts, or omissions of other  
15 individuals or entities over which this answering Defendant had no responsibility or control.

16 AS AND FOR A THIRTIETH, SEPARATE AND DISTINCT AFFIRMATIVE  
17 DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Complaint violates Defendant's right to  
18 protection from excessive fines as provided in the Eighth Amendment to the U.S. Constitution and  
19 Article I, Section 6 of the Constitution of the State of California and therefore fails to state a cause  
20 of action upon which punitive or exemplary damages may be awarded.

21 AS AND FOR A THIRTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
22 DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Complaint violates WEST VALLEY'S  
23 right to due process as provided in the Fifth and Fourteenth Amendments to the U.S. Constitution  
24 and Article I, Section 13 of the Constitution of the State of California and therefore fails to state a  
25 cause of action upon which punitive or exemplary damages may be awarded.

26 AS AND FOR A THIRTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE  
27 DEFENSE, WEST VALLEY alleges that the punitive damages sought by PLAINTIFFS are  
28 barred because there is no allegation of sufficient facts to warrant an award of punitive damages.

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1 AS AND FOR A THIRTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE  
 2 DEFENSE, WEST VALLEY alleges that PLAINTIFFS may not obtain the relief requested in the  
 3 Complaint because PLAINTIFFS did not suffer emotional distress to such substantial quantity or  
 4 induced quality that no reasonable man in a civilized society should be expected to endure.

5 AS AND FOR A THIRTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 6 DEFENSE, WEST VALLEY, without admitting that it engaged in or made any of the acts,  
 7 conduct or statements attributed to it in the Complaint, alleges that to the extent any of its  
 8 employees or agents engage in any unlawful or discriminatory behavior, the alleged unlawful or  
 9 discriminatory acts were committed outside the course and scope of employment.

10 AS AND FOR A THIRTY-FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 11 DEFENSE, WEST VALLEY, without admitting that it engaged in or made any of the acts,  
 12 conduct or statements attributed to it in the Complaint, alleges that if it is found that WEST  
 13 VALLEY'S actions were motivated by both discriminatory and nondiscriminatory reasons, the  
 14 legitimate nondiscriminatory reasons alone would have induced WEST VALLEY to make the  
 15 same decision regarding PLAINTIFFS' employment.

16 AS AND FOR A THIRTY-SIXTH, SEAPARATE AND DISTINCT AFFIRMATIVE  
 17 DEFENSE, WEST VALLEY alleges that PLAINTIFFS' claims are barred to the extent they  
 18 infringe on WEST VALLEY'S constitutional rights under the provisions of the United States and  
 19 California Constitutions.

20 AS AND FOR A THIRTY-SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 21 DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Seventh Cause of Action for  
 22 Whistleblower Retaliation is barred against WEST VALLEY because PLAINTIFFS have not  
 23 alleged, nor can PLAINTIFFS establish: 1) that WEST VALLEY made, adopted, or enforced any  
 24 rule, regulation, or policy preventing PLAINTIFFS from disclosing information to a government  
 25 or law enforcement agency; 2) that WEST VALLEY made, adopted, or enforced any rule,  
 26 regulation or policy preventing PLAINTIFFS from disclosing information to a person with  
 27 authority over PLAINTIFFS; 3) that WEST VALLEY made, adopted, or enforced any rule,  
 28 regulation or policy preventing PLAINTIFFS from disclosing information to another employee of

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WEST VALLEY with the authority to investigate, discover, or correct any alleged violation or noncompliance; or 4) that WEST VALLEY made, adopted, or enforced any rule, regulation or policy preventing PLAINTIFFS from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, based upon any alleged belief of PLAINTIFFS that the information disclosed a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information was part of the PLAINTIFFS' job duties.

AS AND FOR A THIRTY-EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Seventh Cause of Action for Whistleblower Retaliation is barred against WEST VALLEY because PLAINTIFFS have not alleged, nor can PLAINTIFFS establish: 1) that WEST VALLEY retaliated against PLAINTIFFS for disclosing information; 2) that WEST VALLEY retaliated against PLAINTIFFS because WEST VALLEY believed that PLAINTIFFS disclosed or may have disclosed information, to a government or law enforcement agency; 3) that WEST VALLEY retaliated against PLAINTIFFS because WEST VALLEY believed that PLAINTIFFS disclosed or may have disclosed information, to a person with authority over PLAINTIFFS; 4) that WEST VALLEY retaliated against PLAINTIFFS because WEST VALLEY believed that PLAINTIFFS disclosed or may have disclosed information, to another employee of WEST VALLEY who has the authority to investigate, discover, or correct the violation or noncompliance; or 5) that WEST VALLEY retaliated against PLAINTIFFS for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, based upon any alleged belief of PLAINTIFFS that the information disclosed a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information was part of the PLAINTIFFS' job duties.

AS AND FOR A THIRTY-NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, WEST VALLEY alleges that PLAINTIFFS' Seventh Cause of Action for Whistleblower Retaliation is barred against WEST VALLEY because PLAINTIFFS have not alleged, nor can PLAINTIFFS establish that WEST VALLEY, or any person acting on WEST

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1 VALLEY'S behalf, retaliated against PLAINTIFFS for refusing to participate in an activity that  
 2 would result in a violation of state or federal statute, or a violation of or noncompliance with a  
 3 local, state, or federal rule or regulation.

4 AS AND FOR A FORTIETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
 5 WEST VALLEY alleges that PLAINTIFFS lack standing to bring one or more of the cause of  
 6 action stated in the Complaint.

7 AS AND FOR A FORTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
 8 DEFENSE, WEST VALLEY alleges that PLAINTIFFS' First Cause of Action for Racial  
 9 Discrimination, Harassment, Retaliation, failure to Prevent Constructive and Wrongful  
 10 Termination in Violation of 42 U.S.C. Section 1981 is barred against WEST VALLEY because  
 11 that claim does not apply to any alleged contract between PLAINTIFFS and WEST VALLEY.

#### 12 PRAYER

13 WHEREFORE, Defendant WEST VALLEY STAFFING GROUP seeks such relief as may  
 14 be appropriate, including judgment in favor of Defendant WEST VALLEY STAFFING GROUP  
 15 and against Plaintiffs DEMETRIC DI-AZ, OWEN DIAZ and LAMAR PATTERSON as follows:

- 16 1. That PLAINTIFFS' Complaint be demised with prejudice in its entirety;
- 17 2. That PLAINTIFFS take nothing by way of their Complaint;
- 18 3. For an award of reasonable attorneys' fees, litigation expenses, and costs of suit; and
- 19 4. For such other further relief that the Court deems just and proper.

20 DATED: December 4, 2017

PAHL & McCAY  
 A Professional Law Corporation

22 By: /s/ Helene A. Simvoulakis  
 23 Helene A. Simvoulakis, Esq.

24 Attorneys for Defendant  
 25 WEST VALLEY STAFFING GROUP

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